

**STATEMENT FOR THE RECORD**

**PARALYZED VETERANS OF AMERICA**

**FOR THE**

**HOUSE VETERANS' AFFAIRS COMMITTEE**

**SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS**

**HEARING ON "VA'S FIDUCIARY PROGRAM: ENSURING VETERANS' BENEFITS**

**ARE PROPERLY MANAGED"**

**SEPTEMBER 28, 2023**

Chairman Luttrell, Ranking Member Pappas, and members of the Subcommittee, Paralyzed Veterans of America (PVA), would like to thank you for the opportunity to submit our views on the Department of Veterans' (VA) Fiduciary Program. Fiduciaries play an important role in protecting the interests of veterans who because of disability or age are unable to properly manage their financial affairs. Proper management of the program is critical, and congressional oversight is essential in ensuring its mission is successful.

**Assignment of a VA Fiduciary**

VA fiduciaries help veterans manage their VA benefits when they lack the mental capacity to do so due to cognitive issues, such as dementia. A recent VA Office of Inspector General (OIG) report, however, highlighted some troubling findings in the program.<sup>1</sup> The OIG found that two of the four disability benefit questionnaire (DBQ) forms addressing mental competency are inconsistent and may lead to inaccurate determinations and the unnecessary assignment of a fiduciary.

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<sup>1</sup> [US Department of Veterans Affairs office of Inspector General, Inconsistent Disability Benefits Questionnaires May Lead to Inaccurate Mental Competency Determinations, September 13, 2023.](#)

38 C.F.R § 3.353(a) says that "a mentally incompetent person is one who, because of injury or disease, lacks the mental capacity to contract or to manage his or her affairs, including disbursement of funds without limitation." The regulation further states that, "unless the medical evidence is clear, convincing and leaves no doubt as to the person's incompetency, the rating agency will make no determination of incompetency without a definite expression regarding the question by the responsible medical authorities."<sup>2</sup> The OIG determined, however, that the "language discrepancies on the questionnaires could lead to inaccurate assessments and disparate outcomes for veterans."

All DBQs addressing mental competency should use standardized language to limit the potential for inequitable or inconsistent decisions. Although not specifically identified by the OIG, a similar problem exists with the Amyotrophic Lateral Sclerosis (ALS) DBQ. Question 12 of the ALS DBQ asks the medical examiner, "In your judgment, is the veteran able to manage his or her benefit payments in his or her own best interest, or able to direct someone else to do so?" This is the same language used in the DBQs that the OIG identified as deficient.

Several years ago, the VA added the caveat to question 12 that a veteran can "direct someone else to do so," meaning they could communicate their financial need to their caregiver or spouse. This clarifying language has reduced the number of improperly assigned fiduciaries. However, our National Service Officers continue to see some ALS and Multiple Sclerosis (MS) veterans assigned fiduciaries despite their being mentally competent to handle their finances.

Veterans with ALS or MS may be physically unable to write a check or manage their online banking due to weakness, loss of use of extremities, or other physical limitations; however, a physical barrier or limitation is not the same as a cognitive impairment. The ambiguity in the phrasing of question 12 on the ALS DBQ leaves room for errors by a medical examiner or a rating veterans service representative (RVSR) processing the claim. The VA must act to ensure that there is no room for misinterpretation on all DBQs that have the potential to result in the assignment of a fiduciary.

If a medical examiner answers "no" to question 12, the RVSR may lack sufficient context for the veteran's whole situation, which might result in the improper assignment of a fiduciary. When the VA proposes a determination of incompetency, veterans have 60 days to provide evidence to support their competency. If the VA moves ahead and assigns the veteran a fiduciary, a higher-level review or supplemental claim might be necessary, and there is potential for an appeal to address the issue. However, correcting these mistakes often takes weeks or months which is time that veterans living with ALS simply do not have.

Recently, VA has placed a tremendous focus on hiring and training new RVSRs as a result of the hiring and retention tools implemented with the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (PACT) Act (P.L. 117-168).

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<sup>2</sup> [38 C.F.R § Annual Benefits Report Archive - Veterans Benefits Administration Reports \(va.gov\) 3.353\(a\)](#)

Understanding the complexities of disability benefits is no small task, and we commend VA on their efforts to ensure a sufficient workforce. That said, additional training for the Fiduciary Program's workforce would help RVSRs better understand the nuance of complicated cases such as those for veterans with complex injuries and illnesses.

### **Increased Fraud and Misuse Allegations**

According to data from the VA's Annual Benefits Report, there has been an increase in fraud and misuse allegations in recent years. During fiscal year 2016, there were more than 233,000 fiduciaries participating in the program with 1,487 misuse investigations. In fiscal year 2022, there were 2,067 misuse investigations despite there being 125,000 fewer fiduciaries in the program.<sup>3</sup>

It is evident from the data provided by the VA that the number of misuse cases is increasing, while the number of prosecutions has remained relatively flat. This raises several questions that must be addressed. For example, why is the number of misuse allegations increasing if prosecutions are not? Also, have appropriate resources been provided to the program to investigate allegations of misuse properly? In addition, has the VA done its due diligence in ensuring that fiduciaries have been adequately educated about new guidelines and expectations?

### **Caregiver Burden**

When an individual is fulfilling dual roles, such as being a veteran's caregiver and fiduciary, the requirements and expectations of that individual can be overwhelming. If someone is acting as a caregiver for a veteran with a spinal cord injury or disorder, they may be the veteran's family caregiver under the Program of Comprehensive Assistance for Family Caregivers or they may be the veteran's bowel and bladder care provider under VA's Bowel and Bladder Program. These and other similar programs have many requirements that a caregiver must navigate, which can add to stresses that increase the possibility of caregiver burnout.

VA must look for ways to reduce the burden on these caregivers. Unlike the VA's Fiduciary Program, a representative payee for Social Security benefits who is also the spouse of a beneficiary is exempt from keeping meticulous records as required by the VA. When acting as the representative payee, the spouse is expected to use "good judgment" in approving purchases requested by the beneficiary. The VA should consider implementing this requirement for caregivers who are also acting as a VA fiduciary for their veteran spouse.

We must recognize the time, effort, administrative duties, and complexities of caring for another individual. Every effort should be made to ease the burden caregivers face, and resources must be available whenever needed to avoid misuse allegations and unintentional errors.

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<sup>3</sup> [VBA Annual Benefits Report, FY2022.](#)

For example, the VA should consider developing an online portal or a frequently asked questions (FAQ) page on the main program website. Within the VA Fiduciary Guide, which is available online, there is a toll-free number where a fiduciary can connect with one of the hub locations. However, the line is only available during regular business hours. In addition to expanding the accessibility of this line, VA should model its FAQ page after the one on the Social Security website for representative payees, where the Social Security Administration lists the helpline in several locations.<sup>4</sup>

The VA Fiduciary Program is critical in ensuring our most vulnerable veterans are safe, healthy, and can recover or heal free from the burden of managing their VA benefits. A fiduciary is a trusted and valuable member of the veteran's support system, but with that trust comes certain expectations of performance and responsibility. It is incumbent on the VA to provide appropriate resources to ensure fiduciaries can make sound and proper decisions on behalf of their beneficiaries to avoid misuse allegations and other mistakes. However, if a veteran's fiduciary abuses the trust given to them, then they must be dealt with in a timely and efficient manner to ensure that the veteran does not suffer further harm.

PVA thanks the Subcommittee for the opportunity to submit our views on this critical program. We would be happy to answer any questions you may have.

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<sup>4</sup> [Social Security Administration Representative Payee Frequently Asked Questions](#)

## **Information Required by Rule XI 2(g) of the House of Representatives**

Pursuant to Rule XI 2(g) of the House of Representatives, the following information is provided regarding federal grants and contracts.

### **Fiscal Year 2023**

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events — Grant to support rehabilitation sports activities — \$479,000.

### **Fiscal Year 2022**

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events — Grant to support rehabilitation sports activities — \$ 437,745.

### **Fiscal Year 2021**

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events — Grant to support rehabilitation sports activities — \$455,700.

## **Disclosure of Foreign Payments**

Paralyzed Veterans of America is largely supported by donations from the general public. However, in some very rare cases we receive direct donations from foreign nationals. In addition, we receive funding from corporations and foundations which in some cases are U.S. subsidiaries of non-U.S. companies.